IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12720 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHMAD IKBAL MOHMAD RAFIK AMDAVADI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12720 of 2003

MR AR SHAIKH for Petitioner No. 1

MR RM CHAUHAN Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 24/09/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed against him by the Police Commissioner, Surat city on

14.4.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short).

The grounds placed on record and served upon the petitioner reveal that the detaining authority took into consideration five offences registered against the petitioner on 12.9.2002, 22.10.2002, 21.10.2002, 9.2.2003 and around 15.1.2003 under sec. 381, 457 and 454 of IPC. The detaining authority also relied on two in-camera statements recorded by Proposing Authority on 21.3.2003 and verified by the detaining authoity on 10.4.2003 revealing the incidents of 8.12.2002 and 16.2.2003. From the above material, the impugned order came to be passed.

Ld. advocate Ms. Datta for Mr AR Shaikh ld. advocate for the petitioner and Mr Chauhan ld. AGP for respondents were heard at length.

Out of various contentions raised on behalf of petitioner and controverted by ld. AGP, the matter can be disposed of on the ground that there is delay in passing the order. The dates of above mentioned offences clearly suggest that the last offence came to be registered against the petitioner on 9.2.2003 than the statements by proposing authority of the witnesses came to be recorded on 21.3.2003 revealing the incidents of 8.12.2002 and 16.2.2003, however, the same statements were verified by the detaining authority on 10.4.2003 and on 14.4.2003, the order came to be passed. Thus, there is delay of about two months in passing the order of detention from the date of last offence registered against the petitioner. The order impugned, therefore, is required to be quashed and set aside on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 14.4.2003 by the Police Commissioner, Surat city, under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)
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